

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 118/MP/2023 along with I.A. No. 31/2023**

**Coram:**

**Shri Jishnu Barua, Chairperson  
Shri Arun Goyal, Member  
Shri Pravas Kumar Singh, Member**

**Date of Order: 17<sup>th</sup> April, 2024**

**In the matter of**

Petition under Section 79 (1) (f) of the Electricity Act, 2003 seeking quashing of the invoices dated 6.2.2023 and 6.3.2023 to the extent of the interest component levied by NTPC Limited

**And**

**In the matter of:**

Punjab State Power Corporation Limited,  
PSEB, Head Office,  
The Mall, Patiala,  
Punjab-147001

**.... Petitioner**

**Vs**

NTPC Limited,  
NCR-Headquarters  
R&D Building, Sector-24, Noida  
Uttar Pradesh – 201301

**....Respondent**

**Parties Present:**

Shri Anand K. Ganesan, Advocate, PSPCL  
Ms. Swapna Seshadri, Advocate, PSPCL  
Shri Amal Nair, Advocate, PSPCL  
Shri Ashutosh Srivastava, Advocate, NTPC  
Shri Kartikay Trivedi, Advocate, NTPC  
Shri Shiv Bhawan, NTPC

**ORDER**

This Petition has been filed by the Petitioner, Punjab State Power Corporation Limited (in short 'PSPCL') seeking the following relief(s):



- a) Quash the invoices dated 6.2.2023 and 6.3.2023 amounting to Rs.66,17,447/- and Rs.33,78,810/- respectively, as issued by NTPC to the extent challenged in the present Petition;
- b) Pass any other order(s) as deemed fit and just by this Hon'ble Commission.

### **Submissions of the Petitioner**

2. In justification of the above prayers, the Petitioner, in the present Petition, has submitted the following:

(a) The entire controversy which has culminated in PSPCL being constrained to file the present Petition is the raising of the two (2) invoices, namely Invoice dated 6.2.2023 (in short 'Invoice No. 1') and Invoice dated 6.3.2023 (in short 'Invoice No. 2') by the Respondent NTPC on PSPCL. Contrary to the applicable regulations, NTPC by way of the said invoices, has incorrectly charged an interest component on the principal amount as payable by PSPCL.

(b) NTPC owns and operates various generating stations throughout the country, power wherefrom is procured by PSPCL through separate power purchase agreements (PPA). The generating stations in question are (i) Dadri Stage-II (980 MW), (ii) Kahalgaon Stage-II (1500 MW), (iii) Rihand Stage-II (1000 MW), and (iv) Unchahar Stage-IV (500 MW).

(c) The tariff at which the power is procured by PSPCL is determined by this Commission in a routine manner for a period of five (5) years in terms of Sections 61, 62, and 64 of the Electricity Act, 2003 read with the Tariff Regulations, as applicable for a particular period. Accordingly, the Commission has determined the tariff for the above-mentioned generating stations for the periods 2014-19 and 2019-24 as detailed below:

<b>S. N.</b>	<b>Generating station</b>	<b>Tariff Petition</b>	<b>Date of Order</b>	<b>Period</b>
1.	Dadri Stage-II	190/GT/2020	1.6.2022	2014-19
2.	Dadri Stage-II	2/GT/2021	21.5.2022	2019-24
3.	Kahalgaon Stage-II	362/GT/2020	21.4.2022	2014-19
4.	Rihand Stage-II	112/GT/2020	22.3.2022	2014-19
5.	Rihand Stage-II	426/GT/2020	8.4.2022	2019-24
6.	Unchahar Stage-IV	364/GT/2020	16.3.2022	2014-19
7.	Unchahar Stage-IV	3/GT/2021	15.4.2022	2019-24

(d) By way of the above-mentioned tariff determination exercise, there has been an upward revision in the tariff as billed provisionally and the final tariff determined. The differential in tariff is recoverable or to be refunded as the case may be.



(e) NTPC has raised 'Invoice No. 1' on PSPCL, which includes claiming the interest component on the monthly instalments computed from the due date of the first instalment. The cumulative interest, as incorrectly claimed by NTPC, comes to Rs. 66,17,447/-.

(f) NTPC has filed a petition, Petition No. 205/MP/2021, before this Commission, for recovery of additional expenditure incurred due to Ash transportation charges consequent to Ministry of Environment and Forest & Climate Change, Government of India Notification dated 3.11.2009 and Notification dated 25.1.2016 on a recurring basis. In the said Petition, NTPC had sought reimbursement of the 'ash transportation expenditure' incurred during 2019-20 and 2020-21, and for future periods, NTPC had sought reimbursement of the said expenditure, on a monthly basis, from various beneficiaries of its generating stations. By order dated 28.10.2022, this Commission in Petition No. 205/MP/2021 held as under:

*"39. Petitioner has furnished the details of the distance to which fly ash has been transported from the generating station, schedule rates applicable for transportation of fly ash, as notified by the State Governments along with details, including Auditor certified accounts. These documents have been examined and accordingly, the total fly ash transportation expenditure allowed to the Petitioner generating station wise for the period 2019-22 is as per the table in para 38 above totalling to Rs.309704.03 lakh and the same shall be recovered from the beneficiaries of the respective generating stations in 6 (six) equal monthly instalments. However, the Petitioner is directed to submit details regarding award of transportation contracts, distance to which fly ash has been transported along with duly reconciled statements of expenditure incurred on ash transportation at the time of filing petitions for truing up of tariff for the 2019-24 tariff period of the generating stations.  
xxx*

*47. In line with the above decision and since the Petitioner has been permitted to recover the fly ash transportation cost as 'additional O&M expenses', for the period 2019-24, in exercise of the regulatory powers under Section 79(1)(a) of the Act, we permit the recovery of these charges, along with carrying cost, at the rate of interest as specified, in terms of Regulation 10 (7) of the 2019 Tariff Regulations."*

(g) NTPC has raised 'Invoice No. 2' on PSPCL, which includes claiming the interest component on the monthly instalments computed from the due date of the 1st instalment towards fly ash transportation expenditure for the period 2019-22. The cumulative interest, as incorrectly claimed by NTPC, is Rs. 33,78,810/-.

### **Re: Incorrect levy of interest on the monthly instalments**

(h) NTPC has raised the component towards interest in the invoices in complete contravention of the applicable Tariff Regulations. On 21.2.2014, this Commission notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short, 'the 2014 Tariff Regulations').



(i) Similarly, on 7.3.2019, this Commission notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short 'the 2019 Tariff Regulations').

(j) From a plain reading of the above provisions of the regulations, the manner of recovery as laid down by this Commission is amply clear. The difference in tariff is recoverable or to be refunded, as the case may be, with simple interest at the rate equal to the bank rate prevailing as on 1<sup>st</sup> April of the respective year in six (6) equal monthly instalments. In terms of the Regulations, the differential tariff, as computed, is taken as the principal, and the applicable simple interest at the rate equal to the bank rate prevailing as on 1<sup>st</sup> April of the respective year is to be added to the principal amount to arrive at the final recoverable amount. This amount is then to be recovered in a staggered manner in six equal monthly instalments.

(k) PSPCL has duly refunded the differential tariff in terms of the applicable regulations in six equal monthly instalments as under:

<b>S.No.</b>	<b>Unchahar-IV</b>	<b>Principle Instalment Amount</b>	<b>Date of Payment</b>
1	12,79,200	2,13,200.00	15-06-2022
2		2,13,200.00	14-07-2022
3		2,13,200.00	16-08-2022
4		2,13,200.00	12-09-2022
5		2,13,200.00	12-10-2022
6		2,13,200.00	11-11-2022
		<b>12,79,200.00</b>	
<b>S.No.</b>	<b>Rihand-II</b>	<b>Principle Instalment Amount</b>	<b>Date of Payment</b>
1	3,43,06,122	57,17,687.00	20-06-2022
2		57,17,687.00	20-07-2022
3		57,17,687.00	20-08-2022
4		57,17,687.00	19-09-2022
5		57,17,687.00	18-10-2022
6		57,17,689.00	17-11-2022
		<b>3,43,06,124.00</b>	
<b>S.No.</b>	<b>Rihand-II</b>		
1	8,41,41,459	1,40,23,577.00	11-07-2022
2		1,40,23,576.00	21-07-2022
3		1,40,23,576.00	21-08-2022
4		1,40,23,576.00	21-09-2022
5		1,40,23,576.00	20-10-2022
6		1,40,23,576.00	21-11-2022
		<b>8,41,41,457.00</b>	
<b>S.No.</b>	<b>Unchahar-IV</b>		
1	74,61,931	12,43,655.00	14-07-2022
2		12,43,655.00	21-07-2022
3		12,43,655.00	21-08-2022
4		12,43,655.00	21-09-2022
5		12,43,655.00	20-10-2022
6		12,43,655.00	21-11-2022
		<b>74,61,930.00</b>	



S.No.	Kahalgaon-II		
1	18,73,92,622	3,12,32,103.00	20-07-2022
2		3,12,32,103.00	20-08-2022
3		3,12,32,103.00	21-09-2022
4		3,12,32,103.00	20-10-2022
5		3,12,32,107.00	21-11-2022
6		3,12,32,107.00	20-12-2022
		<b>18,73,92,626</b>	
S.No.	Dadri-II		
1	65,19,675	10,86,612.00	20-08-2022
2		10,86,612.00	19-09-2022
3		10,86,612.00	19-10-2022
4		10,86,612.00	17-11-2022
5		10,86,612.00	17-12-2022
6		10,86,615.00	16-01-2023
		<b>65,19,675</b>	

(l) NTPC has, however, by way of Invoice No.1, levied interest on each of the instalments from the due date of the first instalment. This is misconceived and is in the teeth of Regulation 8 (13) of the 2014 Tariff Regulations. With regard to Invoice No. 2, in addition to Regulation, 10(7) of the 2019 Tariff Regulations providing that the difference in tariff is recoverable or to be refunded as the case may be with simple interest at the rate equal to the bank rate prevailing as on 1<sup>st</sup> April of the respective year in six (6) equal monthly instalments the order dated 28.10.2022 in Petition No. 205/MP/2021 itself in paras 39 and 47 (*supra*) clarifies that the fly ash expenditure is to be recovered in six equal monthly invoices in terms of Regulation 10 (7) of the 2019 Tariff Regulations.

(m) PSPCL has, as on the date of filing the present Petition, made the following payments to NTPC in equal instalments, :

Instalment No.	Amount of Ash Transportation Charges Instalments ( <i>in Rs.</i> )	Date of Payment
1 <sup>st</sup>	130504329	22-12-2022
2 <sup>nd</sup>	130504329	21-01-2023
3 <sup>rd</sup>	130504329	20-02-2023
4 <sup>th</sup>	130504329	22-03-2023
5 <sup>th</sup>	130504329	Instalment to be paid in the month of April, 2023
6 <sup>th</sup>	130504329.00/-	Instalment to be paid in the month of April, 2023
<b>Total amount</b>	<b>78,30,25,974/-</b>	

(n) NTPC has, however, levied interest on each of the instalments from the due date of the first instalment, by way of Invoice No. 2. This is misconceived and is in the teeth of Regulation 10 (7) of the 2019 Tariff Regulations as well as the express directions of this Commission in Petition No. 205/MP/2021.



(o) In view thereof, NTPC had incorrectly charged Rs. 66,17,447/- and Rs. 33,78,810/- in the invoices dated 6.2.2023 and 6.3.2023 respectively. NTPC has uploaded both Invoices on the PRAAPTI Portal in terms of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 (in short, the 'LPS Rules, 2022'). In terms of the LPS Rules 2022, the trigger dates of Invoice No.1 is 23.4.2023, and Invoice No. 2 is 21.5.2023. In case of non-payment of the incorrect invoices by PSPCL by the trigger date, the power supply for the entire State of Punjab would be regulated in a staggered manner in terms of Regulation 7 of the LPS Rules, 2022.

(p) In the facts and circumstances mentioned above, the interest components claimed in both Invoice No. 1 and Invoice No. 2 for Rs. 66,17,447/- and Rs. 33,78,810/- respectively, are liable to be dismissed, having been issued in direct contravention of the applicable regulations, as well as the order of this Commission in Petition No. 205/MP/2021.

3. PSPCL has also filed an Interlocutory Application (I. A. No. 31/2023) seeking a stay of Invoice Nos.1 and 2 amounting to Rs. 66,17,447/- and Rs. 33,78,810/- respectively, as issued by NTPC to the extent challenged in the present Petition and also to direct NTPC to take down the said invoices from the PRAAPTI portal during the pendency of the present proceedings;

#### **Hearing dated 20.4.2023**

4. The matter was taken on board after being mentioned by the learned counsel for the Petitioner PSPCL. During the hearing, the learned counsel for the Petitioner made detailed oral submissions and also referred to the IA and sought a stay on Invoices Nos.1 and 2 raised by the Respondent NTPC. In response, the learned counsel from the Respondent submitted, on instructions, that no precipitative action will be taken on the Petitioner till the next date of hearing. This submission was taken on record. Accordingly, the Commission, after hearing the parties, directed to list the Petition along with IA for 'admission.'



### **Hearing dated 24.4.2023**

5. During the hearing of the matter 'on admission,' the learned counsel for both parties made detailed oral submissions. On a specific query by the Commission as to whether the Petitioner had made full payments, as per invoice dated 6.2.2023, the learned counsel for the Respondent submitted that the cumulative interest of Rs 66.17 lakh, as per the said invoice, is yet to be paid by the Petitioner. After hearing the learned counsel for the parties, the Commission 'admitted' the petition. However, the Commission, after directing the Petitioner to furnish certain additional information as under and permitting the parties to file relevant documents, adjourned the hearing of the Petition.

- (a) The circumstances as to how the invoice dated 6.2.2023 raised by Respondent was closed down in the PRAAPTI portal on 24.3.2023, when admittedly, full payment of the said invoice was not made by the Petitioner;*
- (b) Whether the fact of closure of the invoice dated 6.2.2023 (in PRAAPTI portal) was within the knowledge of the Petitioner, when the present Petition, was heard on 20.4.2023;*
- (c) The Petitioner and the Respondent shall file the relevant documents (as prayed for by them in paras 3 and 4 above)*

6. In response, the Petitioner, vide affidavit dated 3.5.2023, has filed the additional information along with the relevant documents and has submitted the following:

- (a) Documents evidencing the fact that other central generating companies, namely NHPC, SJVNL, THDC, and PGCIL have been accepting payment of the under-recovered amounts in six equal monthly installments, without further interest are attached herewith and marked as Annexure-A (colly).
- (b) The invoice dated 6.2.2023 was uploaded by NTPC on the PRAAPTI Portal. The said invoice included an interest component of Rs.66,17,447/- which corresponds to the incorrect computation of interest on the instalments.
- (c) The methodology as adopted by NTPC for computing interest was in clear contravention of the applicable regulations of this Commission governing the field. The distribution companies such as PSPCL have the right to raise a preliminary objection to the correctness of the invoices as raised by generating companies on the PRAAPTI Portal by way of 'Remarks'.





(d) However, such remarks have to be uploaded on the PRAAPTI Portal within 10 days of the invoice being raised. It is stated that since the 10 days with respect to the invoice dated 6.2.2023 had elapsed, PSPCL on 27.3.2023 uploaded the remarks on the PRAAPTI Portal pertaining to Invoice No. 1 (at the time of making payment) and on 10.3.2023 uploaded the remarks pertaining to Invoice No. 2. A copy of the approval from competent authority as uploaded on the PRAAPTI Portal is attached herewith and marked as Annexure-B.

(e) The invoice dated 6.2.2023, less the interest component incorrectly levied by NTPC, was paid by PSPCL on 24.3.2023. PSPCL has no role to play in the manner and mechanism by which invoices are taken down from the PRAAPTI portal. PSPCL had only exercised its right to raise a preliminary dispute on the correctness of the invoice dated 6.2.2023 as uploaded on the PRAAPTI portal and is therefore not privy to the information as to how the invoice dated 6.2.2023 was taken down from the PRAAPTI portal.

(f) The fact of closure of the invoice dated 6.2.2023 on the PRAAPTI portal was not within the knowledge of PSPCL, when the present petition was heard on 20.4.2023. Since the 'Remarks' as against the Invoice dated 6.2.2023 was belated, PSPCL was under the bonafide belief that the said invoice is still active on the PRAAPTI Portal.

(g) PSPCL was under the bonafide belief that since the invoice dated 6.2.2023 has not been paid in full, the same would lead to regulation of the power supply of PSPCL in terms of Regulation 7 of the LPS Rules, 2022 after the trigger date. Otherwise, there was no occasion for PSPCL to seek an urgent listing of the present petition and press for the application of stay. In fact, the application for urgent listing was opposed by the counsel for NTPC when the matter was mentioned on 20.4.2023. Had parties known that the invoice was actually taken down, there would have been no occasion for either the mentioning of the matter or the opposition to the same.

(h) In order to prevent a situation of power regulation in the State of Punjab, PSPCL had, in terms of Regulation 2(h) of the LPS Rules, 2022, approached this Commission by way of the present Petition seeking, inter-alia, stay of the invoice dated 6.2.2023. The Petitioner, under this bonafide belief, was involved in the process of approaching this Commission.

(i) The fact that the knowledge of the invoice dated 6.2.2023 being taken down from the PRAAPTI portal was not privy to either of the parties, as is evident from the fact that when the matter was heard after being mentioned on 20.4.2023, even NTPC, which was objecting vehemently to the stay of the said invoice, did not point out to the fact of it being taken down.





## **Reply of the Respondent NTPC**

7. The Respondent NTPC, vide its reply affidavit dated 10.5.2023, has mainly submitted the following:

(a) NTPC has raised Invoice No.1 due to the under-recovery faced by NTPC that has been upheld by this Hon'ble Commission in various tariff/true-up orders for the different generating stations of NTPC for the control periods 2014-19 and 2019-24. In so far as Invoice No. 2 is concerned, NTPC, in due compliance with the order dated 28.10.2022 in Petition No. 205/MP/2021, had issued the said Invoice to recover the charges of fly ash transportation from the beneficiaries, including PSPCL, along with interest as per the relevant Tariff Regulations.

(b) On 24.3.2023, the Petitioner made an incorrect payment of Rs. 1,371,616,023/- against the amount of Rs. 1,378,233,470/- as raised in the Invoice No. 1 issued by NTPC and on 27.3.2023, uploaded the incorrect remarks with respect to the payments on the PRAAPTI portal, which led to taking down of the Invoice No.1 from the PRAAPTI portal. PSPCL deceitfully approached this Commission, mentioned the matter, and requested an urgent hearing seeking the taking down of the Invoices from the PRAAPTI portal when Invoice No. 1 was already taken down from the PRAAPTI portal based on the remarks made by the Petitioner.

(c) NTPC denies and disputes all the averments, allegations, and contentions raised by the Petitioner in the present Petition, save and except facts that are a matter of record or have been specifically admitted herein. Any omission on the part of NTPC to specifically deal with any of the averments, allegations, or contentions contained in the Petition should not be treated as an admission thereof by NTPC.

### ***Re: Misstatement of facts by PSPCL***

(d) PSPCL through its submissions has attempted to usurp the present proceedings by making scrupulous averments against NTPC qua the Invoices raised by NTPC (which are raised in due compliance with the Tariff Regulations). The Petitioner, by its conduct, has attracted the offence of Perjury as defined under Section 191 of the Indian Penal Code 1986 ("IPC") and punishable under Section 193 of the IPC. The same is evident from the following submissions.

### ***A. Misrepresentation of payment of Invoice dated 6.2.2023 by PSPCL.***

(e) The Petitioner, vide its submissions and during the course of the hearing dated 20.4.2023, stated that the trigger date of Invoice No. 1 in terms of the LPS Rules is 23.4.2023 and in case of non-payment of the invoices by PSPCL, by the trigger



date, the power supply for the entire State of Punjab would be regulated in a staggered manner in terms of Regulation 7 of the LPS Rules.

(f) However, the Petitioner, vide its affidavit, admitted that (a) on 24.3.2023, the Petitioner paid Rs.137,16,16,053 (i.e., Rs. 66,17,417 less than the amount raised in Invoice No.1). However, on the PRAAPTI portal, the Petitioner made incorrect submissions that they have paid the complete amount, i.e., Rs. 137,82,33,470 as claimed by NTPC in Invoice No.1. The same is evident from snap-shot of the PRAAPTI portal, which has been annexed herewith and marked as Annexure R/2.

(g) On 27.3.2023, PSPCL uploaded the remarks against Invoice No.1, based on which it was taken down from the PRAAPTI portal and that on the hearing dated 20.4.2023, they were not aware of the fact that Invoice No.1 had been taken down from the PRAAPTI portal.

(h) The Commission may appreciate that the Petitioner never made this submission/ admission of the fact that they uploaded their remarks on the PRAAPTI portal on 27.3.2023 against Invoice No.1 at the time of filing the present Petition or during the course of the hearing dated 20.4.2023, which amounts to concealment of facts by the Petitioner. This shows that in order to get an infructuous interim relief, the Petitioner deliberately suppressed the material facts, which were essential for the judicious adjudication of the present dispute.

(i) The contentions raised by PSPCL are wholly fallacious as PSPCL in abject disregard to the fact that the Invoice in question has already been paid by the Petitioner on 24.3.2023 (as per Petitioner's own submissions made at Para 9 of its Affidavit). PSPCL deceitfully approached this Commission, mentioned the matter and requested an urgent hearing, seeking the taking down of the Invoices from the PRAAPTI portal when the Invoice No.1 was already taken down from the PRAAPTI portal based on the remarks made by the Petitioner.

(j) Despite categorical queries from this Commission, PSPCL failed to provide the justification as to how after 23 days from submitting their remarks on the PRAAPTI Portal i.e., on 27.3.2023, the Petitioner, on 20.4.2023 was not aware of the fact that the Invoice No.1 had already been taken down from the PRAAPTI portal. PSPCL is merely trying to absolve its malicious act by making ludicrous submissions before this Commission.

(k) In view of the submissions made above, it is amply clear that PSPCL was in full knowledge that the remarks had been uploaded on the PRAAPTI Portal, and PSPCL, with an intent to deceive this Commission, had not stated the same. PSPCL's negligent approach has not only put its case on a weak footing but also wasted the precious time of this Commission. Therefore, in view of the same, the Petition is liable to be dismissed along with costs.



(l) The Hon'ble Supreme Court held that parties should not make false statements and should not conceal material facts in order to gain an advantage or benefit from the court (reliance placed on Vijay Syal & Anr. v. State of Punjab & ors (2003) 9 SCC 401). It is a settled law that if a party does not disclose full facts or suppresses material facts or misleads the court by stating false facts, then the court may dismiss the Petition without even adjudicating the same on merits (judgments of the Hon'ble Supreme Court in Arunima Baruah v Union of India & ors (2007) 6 SCC 120; Dalip Singh v. State of UP & ors (2010) 2 SCC 114; Ram Chandra Singh v. Savitri Devi & ors.(2003) 8 SCC 319 relied upon),

***B. Malevolent representation of the bill dated 5.11.2022 raised by NTPC to PSPCL***

(m) PSPCL, through its common convenience compilation as submitted on 24.4.2023 before this Commission, presented a manufactured version of the Invoice dated 5.11.2022 issued by NTPC to PSPCL. In terms of the tariff order dated 7.10.2022 for the Unchahar-I Station of NTPC, an amount of Rs 5,61,34,379/- was payable by NTPC on account of over-recovery. Accordingly, NTPC raised the energy bill to PSPCL adjusting the total refund amount of Rs 5,61,34,379/- in one go. However, PSPCL, on its own, decided to adjust the refund in six monthly instalments. The matter was discussed with PSPCL at that point in time; however, despite NTPC's one-shot adjustment, the refund was adjusted in six monthly instalments by PSPCL at their end.

(n) The receivable and payable amounts arising out of this Commission's tariff orders are included in the monthly energy bills raised to beneficiaries, wherein the net receivable for NTPC is shown after adjusting its entire refund. Therefore, NTPC refunded its entire amount in one go through the above-said invoice. However, the refund did not get materialised in one go because of PSPCL's own decision and computations for payment.

(o) It is a trite law that a party invoking the jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. The position of law as settled by the Hon'ble Supreme Court with regards to the same in Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam (2012) 6 SCC 430; R. Vishwanatha Pillai v. St. of Kerala & Ors. (2004) 2 SCC 105; Mohammadia Cooperative Building Society Limited v. Lakshmi Srinivasa Cooperative Building Society Limited & Ors. (2008) 7 SCC 310 is relied upon.

***Re: Impugned Invoices are not in contravention of Regulation 8 (13) of the 2014 Tariff Regulations and Regulation 10 (7) of the 2019 Tariff Regulations.***

***A. Plain language of the Regulations***

(p) On perusal of Regulations 8(13), it can be construed that the amount which is under-recovered has to be recovered from the beneficiaries at a simple interest at



a rate prevailing as on 1st April of the respective year, in six equal monthly instalments. It is nowhere mentioned in the said Regulations that the instalments should be interest-free. It is pertinent to note that if the intent of the Regulations would have been to pay 'interest-free' instalments, then the same would have been specifically mentioned in the aforesaid Regulations.

(q) As per the basic principles of accounting, the interest is payable on the balance amount until the full principal amount is recovered from the payor. For the subsequent instalments, the carrying cost shall be computed on the balance differential amount (i.e. the initial differential amount less the partial differential amounts already paid through subsequent instalments) from the date of the last Instalment Invoice till the date of the subsequent instalment Invoice. Therefore, NTPC is justified in levying interest on the monthly instalments paid by the Petitioner until the total principal amount is recovered.

### **B. Payment Mechanism**

(r) There has been a standard practice followed qua recovering the unrecovered amount from the beneficiaries or the generating companies in case of under recovery or over recovery, as the case may be. As per the said practice, either the beneficiaries pay the amount with applicable interest in one go or the amount is paid in six monthly instalments, wherein the interest is charged until the principal unrecovered amount is fully recovered.

(s) NTPC has been issuing invoices *qua* the recovery of legitimate dues to the beneficiaries with clear and specific instructions that the beneficiaries may choose to pay the fixed charges in six (6) monthly instalments, but the same would attract interest as per the CERC Tariff Regulations. A copy of the Invoices raised by NTPC to PSPCL similar to other beneficiaries, are annexed herewith and marked as Annexure R/4 (colly.)

(t) The said practice has been carried out by NTPC in the past and there has been no objection raised by any of the beneficiaries, including PSPCL, regarding the same. It is relevant to note that PSPCL has itself been following the said practice and has paid the complete amount to NTPC in one go to avoid the imposition of the interest rate. In fact, it has been the consistent case of NTPC that it has paid the unrecovered amounts in one go in an effort to avoid having to pay interest on the instalments until the principal unrecovered amount is recovered.

(u) In fact, the Petitioner has been paying the said unrecovered amount in the past by paying the whole amount as raised in the invoices in one go to avoid interest on paying in instalments. If that was not the case, why else did PSPCL earlier choose to pay the arrears in one go while presently choosing to pay in Instalments? The reason obviously is interest on instalments. If they choose to pay the arrears in instalments, they are deferring payments and thus themselves getting the benefit



of interest equivalent to the borrowing cost of payments deferred. Therefore, the sudden objection to the said payment mechanism is unwarranted and should not be entertained by this Commission.

### ***C. Interest-free payments***

(v) When the intent of the legislature/parties is to provide an interest-free payment mechanism to the payor, it is specifically mentioned in the statute or the relevant contract entered between the parties. In this regard, attention is drawn to the judgment passed by the Hon'ble Supreme Court in *Poppatlal Shah v State of Madras* AIR 1953 SC 274, wherein it has been stated that in order to interpret any statutory provision, one must look into the legislative intent of the statute. The intention of the statute has to be found in the words used by the legislature itself, and in case of any doubt, the object and purpose of the statute or the reason and spirit behind it shall be taken into account. If the intent of the Commission was to allow interest-free instalments then it would have incorporated the same in the relevant Tariff Regulations. However, there is no whisper of interest-free in the said Regulations. The legislature has time and again clearly specified whether an interest should be levied or not in a particular case; the same can be construed from the following provisions of the relevant facts, i.e. (i) Section 2(22)(b) of the Income Tax Act, 1961 and Section 4 of the Interest Act, 1978.

(w) This Commission, vide its order dated 2.9.2021 in Petition No. 300/GT/2020, had issued a direction that the arrear payments on account of wage revision are payable by the beneficiaries in twelve equal monthly interest-free instalments only after considering /recording that this is an exception being provided considering it as a special case. Therefore, this Commission has allowed interest-free payments only in special cases. However, in the present case, no special case has been made out by the Petitioner and hence, it is liable to pay the interest on the instalment payments as per the established market practice. In view of the submissions made above, it is submitted that in order to avail interest-free payments the same should be specifically incorporated in the statute/contract/order. Therefore, the submissions made by PSPCL are liable to be rejected.

### ***D. Principle of Carrying Cost***

(x) The time value of money is a settled financial principle, and the same has also been recognized by various fora, including the APTEL. The utility gets compensated by way of carrying cost on this very principle, i.e., when the amount is due, and recovery is deferred, the utility gets compensated by way of carrying cost. Thus, when a beneficiary adopts a payment mechanism where the payment is made in instalments, the utility should be compensated for the delay in recovery of its revenue as the amount has already become due and is being deferred on the account of the payment mechanism chosen by the beneficiary.



(y) When a beneficiary chooses to pay the arrears in monthly instalments (six instalments in the present case), the same will be subject to interest because interest on arrears is nothing more than a restriction on account of the affected party's loss of funds up until the point at which the restitution is implemented. The EMI payment principle is always subject to interest assessments. Hence, the imposition of interest on the instalments by NTPC, is in accordance with the well-established notion of restitution, which is to restore the affected party being deprived of its legitimate reimbursements. In this regard, reliance is placed on the judgment of APTEL in Appeal No. 308 of 2017 (LAPL v HERC & ors).

(z) The issue of carrying cost levied on legitimate expenses, whether or not specified in any specific Regulation, has been further elucidated by APTEL in the following judgments (judgment dated 04. 10.2019 in Appeal No. 246 of 2017 (TPL v GERC & Ors); Judgement dated 05.10.2020 in Appeal No. 97 of 2020 (KPTCL v KERC);

(aa) Therefore, in view of the precedents as specified above, it is a settled principle that the carrying cost is to be allowed on the basis of the financial principle that whenever the recovery of cost is deferred, the financing of the gap in cash flow has to be paid for by way of carrying cost.

### **Rejoinder of the Petitioner PSPCL**

8. PSPCL, vide its rejoinder affidavit dated 20.6.2023, has mainly submitted as under:

(a) The reply filed by NTPC largely seems to be to prejudice this Commission against PSPCL for having pointed out the illegality in charging differential interest on interest by misinterpreting the provisions of Regulation 8 (13) of the 2014 Tariff Regulations and Regulation 10 (7) of the 2019 Tariff Regulations, by NTPC. Most of the reply is based on causing prejudice, and the only explanation offered for charging the interest is that such interest is inherent in cases where the arrears are permitted to be paid through instalments.

(b) Prior to dealing with the reply on the merits, PSPCL wishes to clarify the factual portion with regard to the uploading of the invoices on the PRAAPTI portal by NTPC and the attempt on the part of PSPCL to point out the inconsistency in such invoices as well as to file the present Petition and mention the same for urgent listing and orders before this Commission.

(c) Invoice No.1 was uploaded on the PRAAPTI Portal by NTPC on 7.2.2023, the very next day. PSPCL is a public authority and requires approvals at all stages, seeking legal opinion to initiate any proceedings, etc. Merely because PSPCL sought internal approval to upload its comments on the 1st invoice on 9.3.2023 does not mean that the counsel of PSPCL was in any manner barred from





mentioning the Petition for urgent hearing and orders before this Commission on 20.4.2023.

(d) PSPCL had no idea that Invoice No. 1 had been taken down from the PRAAPTI Portal on 20.4.2023 when it instructed its counsel to mention the matter for urgent hearing and interim orders. When the matter was mentioned, the counsel for PSPCL also pointed out that it had made the payment of the invoice except with regard to the interest portion on 24.3.2023.

(e) The allegations made by NTPC that the invoice was taken down from the PRAAPTI portal due to the incorrect submissions made by PSPCL are absolutely incorrect and malicious and deserve imposition of exemplary costs. If such allegations are being made by NTPC, let a responsible officer of the organization file an affidavit as to which officer of PSPCL colluded with the Ministry of Power, which operates the PRAAPTI Portal to take down Invoice No. 1. NTPC can also produce evidence to justify such a claim.

(f) It is also surprising that the mentioning made by the counsel of PSPCL both on 20.4.2023 and 24.4.2023 when the matter was listed, and urgent orders were sought in view of the trigger date approaching as per the PRAAPTI Portal, the counsel for NTPC stoutly opposed the same. In fact, the grant of an interim order was opposed by NTPC's counsel. If indeed the invoice was taken down, NTPC's counsel could have simply made that submission instead of opposing the Petition and the interim orders sought by PSPCL.

(g) The above conduct of the counsel of NTPC clearly shows that no one was aware that Invoice No.1 had been taken down from the PRAAPTI Portal. PSPCL is also not a regular litigant, which troubles this Commission with multiple petitions and urgent listings in all cases. PSPCL approaches this Commission in exceptional cases where there is a genuine urgency and is aware of how precious the time of this Commission is. If indeed it knew that Invoice No. 1 had already been taken down from the PRAAPTI Portal, there would have been no question of it instructing its counsel to get its Petition and interim application urgently heard and disposed of.

(h) PSPCL does not have any control over the PRAAPTI portal, and in case NTPC has any grievance about why its invoice was taken down, it has a battery of lawyers who can advise it correctly as to which is the appropriate forum to approach to raise such a grievance. Obviously, this Commission cannot go into a roving and fishing enquiry as to when the invoices are uploaded, remarks given and invoices taken down from the PRAAPTI Portal.





**Re: Misstatement of facts by PSPCL** (para 6 of reply)

(i) As far as PSPCL can see, there is no misstatement in the same since for Invoice No.1, the trigger date as per the LPS Rules did work out to be 23.4.2023. The Petition was filed by PSPSCL on 11.4.2023, and in para 32 of the petition, PSPCL has adverted to the trigger dates for Invoice No. 1 being 23.4.2023 and Invoice No. 2 being 21.5.2023. Further, PSPCL, in its affidavit filed on 3.5.2023, has stated that it uploaded the remarks on Invoice No. 1 on 27.3.2023 (@para 8 of the affidavit dated 3.5.2023 – Page 35 of records). Therefore, there is no misstatement even with regard to these dates by PSPCL either in its Petition or in the hearing before this Commission.

(j) It is completely illogical for NTPC to contend that PSPCL did not inform this Commission that it had uploaded its remarks on the PRAAPTI Portal on Invoice No. 1 on 27.3.2023 when this is obvious in most of the disputed cases of invoices. Further, in the affidavit dated 3.5.2023, PSPCL clarified the position with regard to the PRAAPTI portal because NTPC's counsel made this a big issue in the hearing held on 24.4.2023. It is not clear as to how this is a concealment of any fact.

(k) It is not understood to PSPCL as to how it would benefit from getting an infructuous interim relief if indeed the interim relief sought by PSPCL was infructuous, why did the counsel for NTPC oppose such a relief tooth and nail when the matter was heard on 24.4.2023. NTPC could have simply said that the invoices have been taken down from the PRAAPTI Portal and therefore PSPCL is wasting the time of this Commission. That would have ended the matter.

(l) It is wholly incorrect on the part of NTPC to contend that PSPCL made a fraudulent claim before this Commission in the mentioning held on 20.4.2023 that it was not aware that the invoice was taken down. In fact, there was no such discussion in the hearing at all, and there was only mention of taking up the matter on an urgent basis by the counsel for PSPCL. Such unnecessary remarks by NTPC, which itself is a public sector undertaking, should be viewed seriously by this Commission, and Section 142 and 146 proceedings should be initiated against the officers of NTPC who have signed such incorrect replies and affidavits to spoil the atmosphere before this Commission, which is a statutory body performing its functions in accordance with the provisions of the Electricity Act, 2003 for the last several years.

(m) For NTPC to contend that the person who moved an internal communication of PSPCL to upload remarks against Invoice No. 1 in March 2023 and the person signing the affidavit in the instant petition are one and the same does not mean that the said person was aware that the invoice had been taken down from the PRAAPTI Portal when it instructed its counsel to mention the matter for urgent orders in April 2023.



(n) The judgements relied on by NTPC are completely irrelevant and nothing but an attempt to waste precious time of this Hon'ble Commission and distract from the principal issues raised in the present Petition. If NTPC has any grievance as to how Invoice No. 1 was taken down from the PRAAPTI Portal, all it has to do is approach the Ministry of Power or approach the Hon'ble High Court by taking appropriate proceedings of judicial review instead of wasting the precious time and effort of this Commission.

(o) It was never represented by the counsel for PSPCL that it is producing a copy of the original bill of NTPC dated 5.11.2022 in its compilation. What is being referred to is on page 22 of the said compilation, which only shows how the under-recovered amount in the case of one of the generating stations – Unchahar – I for the period 2019-24, tariff order dated 7.10.2022 - has been adjusted in six (6) equal instalments.

(p) It is not even clear how the above is a “malevolent representation”. The attempt of PSPCL was to demonstrate how the interest had already been added to the differential tariff in respect of each of the generating stations and recovered through six (6) equal instalments, which is exactly in terms of the Tariff Regulations framed by this Commission governing the field.

(q) The very fact that NTPC decided to adjust the differential amount in one instalment would not change the interpretation of the Tariff Regulations or implementation of the same. There is no deliberate attempt on the part of PSPCL to mislead this Commission. In fact, had PSPCL known that Invoice No. 1 had been taken down from the PRAAPTI Portal, it would not have even prepared any convenience compilation or troubled this Commission for the hearing in the matter on 24.4.2023.

(r) To allege perjury based on reading one page from the compilation and another from some internal communication does not show much faith in the manner in which NTPC is conducting its legal proceedings. It is wrong and denied that PSPCL has either submitted manufactured documents before this Commission fabricated the original invoice dated 5.11.2022 raised by NTPC or made any false or misleading statements on oath. NTPC would do better to explain its position with regard to the obviously incorrect billing of interest done by it, which is against the plain language of Regulation 8 (13) of the 2014 Tariff Regulations and Regulation 10 (7) of the 2019 Tariff Regulations. In the above background, PSPCL craves leave to deal with the reply on merits.



**RE: Impugned Invoices are not in contravention to Regulation 8 (13) of the 2014 Tariff Regulations and Regulation 10 (7) of the 2019 Tariff Regulations**

(s) It is wrong and denied that the impugned invoices are not in contravention of Regulation 8(13) of the 2014 Tariff Regulations and Regulation 10 (7) of the 2019 Tariff Regulations. As already stated by NTPC (@para 7.2 of its reply), the amount which is under recovered has to be recovered from the beneficiaries, like PSPCL herein, at a simple interest at a rate prevailing as on 1st April of the respective year in six (6) equal monthly instalments. This is the plain language of the Regulations and has to be given its natural effect.

(t) NTPC has wrongly contended that since the said Regulations do not specifically mention that the instalments should be interest-free, it is not the intent of the said Regulations to provide interest-free instalments. Interest is a substantive right and this legal position has been settled till the Hon'ble Supreme Court. Being a substantive right, it is for NTPC to demonstrate how it is entitled to claim interest instead of relying on the absence of a prohibition in the Tariff Regulations.

(u) If the contention of NTPC is accepted, nothing prevents any party from further contending that the intent of the said Regulations is to pay 'interest on interest' on instalments. When the Tariff Regulations specifically deal with the recovery of arrears either in one go or in instalments with simple interest on a particular date, it cannot be that the intent of the Tariff Regulations is to permit further interest in the case of instalments. If so, the same would have been specifically mentioned in the Regulations.

(v) No other CPSU, including PGCIL, SJVNL, NHPC or THDC, has claimed interest on interest or further interest to be levied on the instalments. NTPC is wrong in levying interest on interest on the instalments to be paid by PSPCL. Further, NTPC has wrongly gone into the basic principles of accounting to justify its contention of applying interest on interest on the instalments. NTPC cannot go beyond the applicable Regulations to justify its claim, and since the Tariff Regulations specifically mention the payment of six (6) equal monthly instalments, NTPC is wrong in trying to justify the unequal instalments.

(w) NTPC has wrongly stated that PSPCL is liable to pay the interest on instalments until the principal unrecovered amount is fully recovered because the same is mentioned on the invoices sent to PSPCL. The very fact that NTPC has raised the invoice pertaining to interest after receiving the full six (6) instalments, including the differential arrears and the simple interest on the same, shows that there was no under-recovery for which NTPC is claiming further interest.



(x) Also, something which is in contradiction to the applicable Regulations cannot be claimed by simply mentioning it on the invoices. It shows that NTPC, by mentioning the interest applicable on the instalments on the invoices, tried to gain by defrauding the beneficiaries. Any decision of this Commission on the interpretation of the Regulations must, therefore, be applied to all beneficiaries so that the consumers of the Distribution Companies are not unnecessarily burdened with interest on interest.

(y) NTPC has wrongly stated that PSPCL has been paying the complete amount of invoices in the past, in one go, to avoid the imposition of the interest on instalments. Since there are two (2) methods of payment, one being the payment to be made in one go and the other being the payment to be made in six (6) equal monthly instalments, it is a choice given to the beneficiaries to decide the method of payment. NTPC is wrongly assuming that since PSPCL has paid the invoices in one go in the past, it did so to avoid the payment of interest and, therefore, is liable to pay the interest on instalments in the present case. This contention of NTPC is outrageous. PSPCL, as a commercial entity, can decide whether it chooses to pay the invoices in one go or by way of six (6) equal monthly instalments, as long as the payment is as per the applicable Regulations.

(z) Further, the judgements and statutes as relied on by NTPC are irrelevant and nothing but an attempt to waste precious time of this Commission and distract from the principal issues raised in the present Petition.

(aa) If the intent of the said Regulations had been to pay 'interest on interest' when instalments are permitted, the same would have been specifically mentioned in the said Regulations. NTPC has wrongly relied on the order dated 2.9.2021 in Petition No. 300/GT/2020. The Commission, in the said order, has directed that the arrear payments are payable by beneficiaries in twelve (12) equal monthly interest-free instalments only after considering that it is an exception being provided by considering it as a special case. PSPCL does not need to make out a special case in order to justify the non-payment of interest on instalments as levied by NTPC because the present case comes under the ambit of the Tariff Regulations, which clearly provides for the manner of payment and the applicable interest.

(bb) On a plain reading of Regulation 8 (13) of the 2014 Tariff Regulations and Regulation 10 (7) of the 2019 Tariff Regulations, the manner of recovery laid down by this Commission becomes clear, and there is no question of applying any other rule of interpretation since the words used can be given their natural meaning. In terms of the Tariff Regulations, the differential tariff as computed is taken as the principal, and the applicable simple interest at the rate equal to the bank rate prevailing as on 1st April of the respective year is to be added to the principal



amount to arrive at the final recoverable amount. This amount is then to be recovered in a staggered manner in six (6) equal monthly instalments.

***Re: Principle of carrying cost (Para 7.14)***

(cc) The reliance placed by NTPC on the general principle of payment of carrying cost cannot apply when the Tariff Regulations specifically provide for the manner of recovery of arrears as well as the interest applicable. The judgment of the APTEL relied on pertaining to a case where tariff orders of the various commissions were interfered with by the APTEL or where the interest was awarded for restitution. As opposed to both of the above, in the present case, PSPCL has only followed the Tariff Regulations and paid the difference of arrears along with interest in six (6) equal monthly instalments. Surely, no further restitution or time value of money can be granted when this Commission has considered all aspects by specifying the Tariff Regulations itself.

**Hearing dated 12.9.2023**

9. The Petition was heard on 12.9.2023, and the Commission, after hearing the learned counsel for both parties, reserved its order in the Petition.

**Hearing dated 18.3.2024**

10. Since the order in the Petition (which was reserved on 12.9.2023) could not be issued prior to one Member, who formed part of the Coram, demitting office, the matter has been re-listed for hearing on 18.3.2024. During the hearing, the learned counsels for the Petitioner and the Respondent submitted that since pleadings and arguments have already been completed, the Commission may reserve its order in the petition. Based on the consent of the parties, the order in the petition was reserved.

11. Before proceeding, we take note that the Petitioner, in compliance with the directions of the Commission, vide ROP dated 24.4.2023 (as stated in para 5 above), has furnished its clarification regarding the circumstances as to how the invoice No.1 raised by NTPC was closed down in the PRAAPTI portal and has also stated that the fact of closure was not within its knowledge when the Petition was heard on 24.4.2023. Per contra, NTPC, while pointing out that PSPCL on 27.3.2023 had uploaded their remarks against invoice



No.1, based on which the said invoice was taken down from the PRAAPTI portal, has submitted that PSPCL in order to get an infructuous interim relief has deliberately suppressed the material facts, which were essential for adjudicating the dispute. It has also submitted that PSPCL, through its common convenience compilation, as submitted on 24.4.2023 before this Commission, presented a manufactured version of the Invoice dated 5.11.2022 issued by NTPC to PSPCL. Accordingly, NTPC has argued that the Petitioner, by its conduct, has attracted the offence of Perjury, as defined under Section 191 of the IPC 1986, and is punishable under Section 193 of the IPC due to misrepresentation of the payment of the bill dated 6.2.2023. However, PSPCL while pointing out that page 22 of the said compilation was only to show how the under-recovered amount in the case of one of the generating stations – Unchahar -I of NTPC for the period 2019-24 vide order dated 7.10.2022 has been adjusted in six (6) equal instalments, has denied that it has either submitted manufactured documents before this Commission or fabricated the original invoice dated 5.11.2022 raised by NTPC or has misrepresented or made any false or misleading statements on oath. We have examined the submissions. In our considered view, the clarification furnished by PSPCL, vide affidavit dated 3.5.2023, with regard to the circumstances as to the taking down of the invoice from the PRAAPTI portal (as in para 6 above), appears to be satisfactory, and we find no reason to proceed further. Further, the Commission on 24.4.2023 had, based on the preliminary objections raised by NTPC, on this issue, had withdrawn the undertaking given by the Respondent NTPC that it will not take any precipitative action on PSPCL. In this background, we find no reason to sustain the submissions of NTPC. Therefore, the issues raised on this count stand closed, and we, accordingly, proceed to examine the disputes raised by the parties on merits.





## **Analysis and Decision**

12. From the submissions of the parties, on merits, the issue which emerges for consideration is whether;

***“Regulation 8 (13) of the 2014 Tariff Regulations and Regulation 10 (7) of the 2019 Tariff Regulations provide for the levy of interest on the monthly instalments paid by PSPCL, until the recovery of the principal amount, as contended by the Respondent NTPC?”***

13. Regulation 8(12) and 8(13) of the 2014 Tariff Regulations provide as under:

*“8. Truing up  
xxx.*

*(12) Where after the truing up, the tariff recovered is less than the tariff approved by the Commission under these regulations, the generating company or the transmission licensee shall recover from the beneficiaries or the long-term transmission customers/ DICs, as the case may be, the under-recovered amount as specified in the Clause 13 of this regulation.*

*(13) The amount under-recovered or over-recovered, along with simple interest at the rate equal to the bank rate as on 1st April of the respective year, shall be recovered or refunded by the generating company or the transmission licensee, as the case may be, **in six equal monthly instalments** starting within three months from the date of the tariff order issued by the Commission.”*

14. Similarly, Regulation 10(7) of the 2019 Tariff Regulations provides as under:

*“10. Determination of tariff  
Xxxx*

*(7) The difference between the tariff determined in accordance with clauses (3) and (5) above and clauses (4) and (5) above shall be recovered from or refunded to, the beneficiaries or the long-term customers, as the case may be, with simple interest at the rate equal to the bank rate prevailing as on 1st April of the respective year of the tariff period, **in six equal monthly instalments**.*

15. The Commission, while truing-up the tariff of the generating stations of NTPC (as tabulated under para 2 (c) above) for the period 2014-19 and determining the tariff of the said generating stations for the period 2019-24 by its various orders, had directed that any under-recoveries/over-recoveries, as the case may be, shall be adjusted in terms of Regulation 8(13) of the 2014 Tariff Regulations. In terms of the above-mentioned tariff determination exercise, there has been, in the present case, an upward revision in the





tariff as billed provisionally and the final tariff determined, and this differential in tariff is recoverable or to be refunded as the case may be. Similarly, the Commission, while allowing the claims of NTPC in respect of the Fly ash transportation charges (as additional O&M expenses) for the period 2019-24, had vide order dated 28.10.2022 in Petition No. 205/MP/2021, permitted NTPC to recover these charges, along with carrying cost, at the rate of interest as specified, in terms of Regulation 10 (7) of the 2019 Tariff Regulations, in 6 (six) equal monthly instalments. PSPCL has argued that in terms of Regulation 8(13) of the 2014 Tariff Regulations and Regulations 10(7) of the 2019 Tariff Regulations, the differential tariff computed is to be considered as the principal amount, and the applicable simple interest at the rate equal to the bank rate prevailing as on 1st April of the respective year is to be added to the principal amount to arrive at the final recoverable amount, which is to be then recovered in a staggered manner in six equal monthly instalments. Per contra, NTPC has contended that it is entitled to charge the interest component on the monthly instalments computed from the due date of the 1<sup>st</sup> instalment, as the said regulations do not provide for any interest-free instalments.

16. We have examined the submissions. On a plain reading of both the regulations viz., Regulation 8(13) and Regulation 10(7), it is clear that under-recovered or over-recovered amount, along with simple interest at the rate equal to the bank rate as on 1st April of the respective year, is required to be recovered or refunded, by the generating company or the transmission licensee, as the case may be, in six equal monthly instalments. In other words, the differential tariff (amount) computed is to be considered as the principal amount and the applicable simple interest at the rate equal to the bank rate prevailing as on 1st April of the respective year, is to be added to the said principle amount, to arrive at the amount final recoverable. This amount is then to be recovered in a staggered



manner in six equal monthly instalments. Thus, the objective behind the six-monthly instalments, is to prevent the burden of additional interest on the beneficiaries. However, in the event of any deferment or default in the payment of the instalments, the interest on monthly instalments would kick in. As no deferment/ default or delay has been attributed to PSPCL in the present case, the question of charging interest on the monthly instalments by NTPC does not arise.

17. In our view, the use of the phrase 'in six equal monthly instalments' in Regulation 8(12) and 8(13) of the 2014 Tariff Regulations have to be given their natural meaning. There is no question of applying any other rule of interpretation. Further, PSPCL has brought on record certain documents to show that no other CPSUs, including PGCIL, SJVNL, NHPC, or THDC, have claimed interest on the equal instalments. In light of this, the submissions of NTPC cannot be sustained.

18. Another contention of NTPC is that as per the standard practice, either the beneficiaries pay the amount with applicable interest in one go or the amount is paid in six monthly instalments, wherein the interest is charged until the principal unrecovered amount is fully recovered. Per contra, PSPCL has stated that as a commercial entity, it can decide as to whether it chooses to pay the invoices in one go or by way of six (6) equal monthly instalments, as long as the payment is as per the applicable Regulations. This submission of PSPCL is acceptable. When the Tariff Regulations specifically deal with the recovery of arrears in instalments with simple interest on a particular date (or, for that matter, in one go), it cannot be that the intent of the Tariff Regulations is to permit further interest in case of instalments. Since the Tariff Regulations [Regulations 8(13) and 10(7)] specifically mention the payment of differential amounts in six (6) equal monthly instalments, NTPC cannot go beyond the applicable Regulations, to justify its claim for



interest on monthly instalments. Further, there is no arrangement under the 2014 and 2019 Tariff Regulations, that provides for charging of interest under the circumstances discussed in this order, beyond the date of the order of truing up. In our considered view, the methodology adopted by NTPC by levying interest on the monthly instalment payments made by PSPCL from the due date of the 1<sup>st</sup> instalment is not in line with the intent and spirit of the said regulations and is therefore, not justified.

19. The reliance placed by NTPC, along with the judgment of APTEL, on the general principles of payment of carrying cost is not applicable, as in the present case, the Tariff Regulations specifically provide for the manner of recovery of arrears, as well as the interest applicable, unlike interest being awarded for restitution. NTPC has also contended that in the Commission's order dated 2.9.2021 in Petition No. 300/GT/2020 directing arrear payments in 12 equal interest-free monthly instalments, the order specifically used the words 'interest-free monthly instalments' whereas the Regulation 8(12) and 8(13) of the 2014 Tariff Regulations do not use the word 'interest-free'. The Commission is of the view that the phrase 'interest-free monthly instalments' was used in the Commission's order dated 2.9.2021 in Petition No. 300/GT/2020, to remove any doubt with regard to the payment of interest on instalments.

20. In the light of the above discussions, the submissions of NTPC are rejected, and the Petitioner PSPCL's prayer is allowed. Consequent upon this, Invoice No.1 dated 6.2.2023 and Invoice No.2 dated 6.3.2023 amounting to Rs.66,17,447/- and Rs.33,78,810/- respectively, as raised by NTPC are quashed, as prayed for by PSPCL. We order accordingly.



21. Petition No. 118/MP/2023 along with the IA is disposed of in terms of the above.

**Sd/-**  
**(Pravas Kumar Singh)**  
**Member**

**Sd/-**  
**(Arun Goyal)**  
**Member**

**Sd/-**  
**(Jishnu Barua)**  
**Chairperson**

